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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

YUKI LEE, in her capacity as
personal representative of the
Estate of her deceased husband
JOO CHAN LEE and in her capacity
as Guardian of their minor
daughter, A.L., both as beneficiaries
and the sole heirs of Decedent's
estate,

Plaintiff,

vs.

THE MOODY BIBLE INSTITUTE OF
CHICAGO, and Illinois corporation,

Defendant.

No. 2:19-cv-00326-SAB

**PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Comes now Plaintiff Yuki Lee, through her attorneys Charles Herrmann
and Anthony Marsh of the **HERRMANN LAW GROUP**, to allege and complain
against defendant as follows.

I. NATURE OF ACTION

1.1 Plaintiff Yuki Lee (Yuki) seeks recovery of damages for wrongful
death and personal injuries arising out of the death of her Decedent

1 husband, Joochan Lee (Joochan) in an air crash that occurred near the
2 unincorporated community of Clayton, in Stevens County, Washington on
3 July 13, 2018. The flight was exclusively conducted by agents of
4 Defendant The Moody Bible Institute of Chicago's aviation college (Moody)
5 in Spokane Washington.

6 **II. PARTIES**

7 2.1 Plaintiff Yuki is Decedent Joochan's surviving widow. Yuki brings
8 this complaint in her capacity as duly appointed Personal Representative
9 of the Estate of Decedent Joochan Lee filed and pending under Spokane
10 County Superior Court cause #19-401268-32. She is also the natural
11 custodial mother and legal guardian of their minor daughter Plaintiff A.L.
12 At the time of the air crash, Yuki was pregnant carrying A.L. who is now
13 a three-year-old toddler.

14 2.2 Defendant Moody is an Illinois corporation. It maintains its
15 corporate headquarters in Chicago, Illinois. Moody owns and operates a
16 flight school in Spokane, Washington, which offers a Bachelor of Science
17 degree designed to qualify graduates for, among several certifications,
18 FAA commercial pilot licenses with instrument certifications. Moody is
19 registered with the Secretaries of State in Illinois and Washington.

20 **III. JURISDICTION & VENUE**

21 3.1 The matter in controversy exceeds \$75,000.00.

22 3.2 Moody's ill-fated training flight departed Felts Field airport located
23 within eastern city limits of Spokane, Washington. The air crash occurred
24 approximately 23 miles northwest of Felts Field near the unincorporated
25 community of Clayton in Stevens County, Washington. Joochan's estate
26 is filed and pending in Spokane County Superior Court.

27 3.3 This Court has diversity jurisdiction under 28 U.S.C § 1332. Venue
28 is proper in this court under 28 U.S.C § 1391.

IV. FACTS

4.1 Moody's flight school is certified by the FAA. It offers a five-year curriculum that bestows upon its graduates a Bachelor of Science Degree in Missionary Aviation Technology. This degree trains students to qualify for a FAA commercial pilot license with instrument certification.

4.2 Enrollment at Moody's flight school is open to a large segment of the public. The sole limitation is that an applicant has been a practicing Protestant Christian for at least a year prior to enrolling. Tuition at Moody covers at least 325 hours of actual flight training including beginning flights wherein the aircraft is under command and control of one of Moody's Certified Flight Instructors (CFI) pilots training student passengers.

4.3 Joochan was enrolled as a student at Moody majoring in flight. He planned to first become a missionary pilot and then engage in a career as a commercial pilot.

4.4 As part of its enrollment process, Moody required Joochan to sign a classic adhesion waiver entitled "MOODY AVIATION FLIGHT AND/OR MAINTENANCE ACTIVITIES, *Covenant Not to Sue, Liability Release and Assumption of Risk*," which purported to shield Moody from liability for any negligence. Yuki did not sign it, never gave Joochan authority to sign on her behalf, and was completely unaware of this form or that Moody had required Joochan to sign it.

4.5 Moody established 13 practice areas wherein its actual flight training takes place, 7 north of Felts Field, and 6 to the south. See: Exhibit 1 Moody Practice Areas map attached.

4.6 This training flight was to take place in Moody's "Clayton" practice area, the approximate center of which lies about 26 miles northwest of Felts Field. See: Ex. 1 filed herewith.

1 4.7 The Clayton practice area contains or is near lakes, rivers,
2 reservoirs and other freshwater features that, especially in July, are
3 known to be nesting and foraging waters for squadrons of American White
4 Pelicans during their summer migration south to their winter habitats.
5 These birds breed primarily on isolated islands in lakes, rivers, reservoirs
6 and other freshwater features. They forage mainly in shallow areas of
7 these water features. White pelicans are limited by the availability of
8 remote nesting sites and rich foraging habitats in freshwater features.
9 Their presence in the many lakes, rivers, and other freshwater features
10 in and near Moody's Clayton practice area reaches a sharp peak annually
11 every July, on average many times more than any other month.

12 4.8 These Pelicans are the second largest flying bird native to North
13 America. They average 50-70 inches in length, a wingspan of 8 to 10 feet,
14 and weigh 10-17 pounds with some as large as 30lbs. They fly as high as
15 10,000 feet. They nest on isolated islands in freshwater lakes with a daily
16 foraging range that can exceed 50 kilometers (31 miles).

17 4.9 The danger these large birds represent to air safety is well
18 documented and widely known throughout the aviation industry. The first
19 reported birdstrike occurred on September 7, 1905, while Orville Wright
20 was flying over a cornfield in Ohio. Hundreds of human injuries and deaths
21 have occurred in the last 34 years. Bird strikes cause death and personal
22 injuries to humans as well as hundreds of millions of dollars of damage to
23 aircraft each year. Both FAA and U.S. Fish and Wildlife Service issue bird
24 strike warnings and guidance to avoid, whenever practical, scheduling
25 flights where large birds such as these are present in substantial numbers.

26 4.10 Upon information and belief, despite readily available information,
27 neither the pilot CFI Senn nor any of his superiors at Moody knew that
28 considerable numbers of these enormous Pelicans were present in or near

1 the Clayton practice area, sharply peaking in July each year. Moody
2 undertook no investigation regarding presence of large birds within their
3 practice areas. The Pelicans' presence was not discovered nor were they
4 even considered in locating this ill-fated flight.

5 4.11 In the alternative, if Moody did know that these birds were present
6 in extraordinary numbers in the month of July, Moody simply disregarded
7 the danger these birds posed. They sent this flight into their Clayton
8 practice area at the peak of these birds' seasonal presence in July of 2018.

9 4.12 Moody did not consider rescheduling training flights to avoid the
10 drastically increased danger during the July peak of Pelicans presence.

11 4.13 Moody also did not consider another practical alternative. A large
12 swath of dry land, void of water features capable of providing these
13 Pelicans with nesting or foraging water sights lies directly south of Felts
14 Field towards the town of Palouse. This area, nearly void of all habitats
15 American White Pelicans require, provided a far safer alternative area for
16 Moody to conduct its training flights in July. It constituted a second
17 reasonable and eminently practical alternative.

18 4.14 Nevertheless, on July 13, 2018, Joochan began his first actual
19 flight training lesson. He had never before flown an aircraft. Joochan was
20 a student passenger seated in the left front seat of the aircraft, a Cessna
21 172 R "Skyhawk," manufactured in year 2000 with registration #N24442.
22 The plane and flight were under command and control of Diego Senn, a
23 Certified Flight Instructor (CFI) employed by Moody. Mr. Senn had
24 received his CFI license 6 months before on January 14, 2018.

25 4.15 Andrew Trouten, a fellow student at Moody, was seated in a back
26 seat as a voluntary passenger/observer.

27 4.16 The flight departed Felts Field at approximately 9:55 a.m. on July
28 13, 2018. Weather was clear with 10 miles of visibility. Temperature was

1 28 C / 82.4 F. Wind was a mild 4 knots at 110° SE. The last recorded
2 track data at 10:21:18 indicated ground speed of 117 knots (135 mph).

3 4.17 Witnesses reported that they observed the airplane in a steep dive
4 toward terrain when the wings broke off from the plane. Other witnesses
5 report seeing the plane upside down, followed by a sudden turn vertical.

6 4.18 All three people onboard, trapped in a wingless fuselage, unable
7 to maneuver, plummeted to their deaths upon impact with terrain below.

8 4.19 The plane crashed in a grass field of rural farmland near Clayton,
9 about 23 miles northwest of Felts Field. The wreckage was distributed
10 over 400 ft distance on a median magnetic bearing of about 030°.

11 4.20 Present among the debris at the wreckage sight was a small golf
12 ball-sized tuft of white and light grey feathers, which were not preserved.
13 Subsequent analysis conducted by the Smithsonian Institution's Feather
14 Identification Lab of nine microslides taken from two bags of windscreen
15 shard samples from the wreckage concluded feather fragments contained
16 DNA consistent with American White Pelican.

17 4.21 It is virtually certain this air crash was caused by an American
18 White Pelican striking the windshield of the plane.

19 **V. RESPONDEAT SUPERIOR**

20 5.1 All acts and/or omissions by Defendant Moody were performed or
21 omitted by authorized agents acting within the scope of their agency.
22 Thus, under the doctrine of Respondeat Superior, Moody is vicariously
23 liable for all their acts and/or omissions.

24 **VI. NEGLIGENCE**

25 6.1 All above paragraphs are incorporated herein as fully set forth.

26 6.2 Moody failed to take any action to discover the presence of high
27 numbers of *American White Pelicans* in and/or near its Clayton practice
28 area seasonally peaking during the month of July. Or, in gross disregard

1 of the Pelican's presence, Moody plunged ahead sending this ill-fated flight
2 into the Clayton practice area infested with squadrons of these Pelicans.

3 6.3 As a direct result, Moody failed to reschedule its training flights to
4 dates when these Pelicans were not present in such great numbers or, in
5 the alternative, to redirect its training flights to a safer dry land area to
6 the south of Felts Field where there were virtually no nesting or foraging
7 water features present—where relatively few of these Pelicans would likely
8 be present. Both alternatives would have been eminently practical.

9 6.4 Moody failed to exercise due care a reasonable operator of a flight
10 school would exercise under like and similar circumstances. Moody's
11 failures constitute breaches of duties Moody owed to Joochan.

12 6.5 First, Moody owed Joochan of a common carrier to exercise the
13 highest care consistent with practical operation of its business as a flight
14 school. Moody's failure to exercise such care constitutes negligence.

15 6.6 Second, Moody's failures certainly constitute ordinary negligence.

16 6.7 Moody's negligence violated the standards of care found in 14 CFR
17 §91.13 CARELESS OR RECKLESS OPERATION and as recognized in 49 USCA
18 §44701(d)(1)(A). GENERAL REQUIREMENTS. Further, the remedies for such
19 negligence are reserved to the states by 49 USCA §401.20 RELATIONSHIP
20 TO OTHER LAWS as found in RCW 4.020 *et seq.* specifying causes of action
21 for wrongful death as well as survival actions as are more particularly
22 alleged below.

23 6.8 Moody's negligence was the proximate cause of Joochan's death.

24 **VII. Exculpatory Form**

25 7.1 Moody required Joochan to sign a classic adhesion exculpatory
26 form entitled "MOODY AVIATION FLIGHT AND/OR MAINTENANCE ACTIVITIES
27 *Covenant Not to Sue, Liability Release, and Assumption of Risk.*"
28

1 7.2 Moody owed Joochan the duty of care of a common carrier. This
2 flight was an integral part of Moody's business as a flight school. Joochan
3 paid tuition covering the flight—several hundred dollars per credit hour.
4 He was indeed a paying patron. Attendance at Moody's flight school was
5 open to a vast segment of the public. The only limitation was that
6 applicants have been practicing Protestant Christians for at least a year.
7 Exculpatory waivers are not effective to protect a common carrier from
8 its negligence while carrying a paying patron.

9 7.3 Further, the exculpatory form Moody required Joochan to sign as
10 part of his enrollment process was *void ab initio* as violative of public
11 policy in that: (1) aviation safety is in fact highly regulated; (2) Moody's
12 flight school provides a service of great importance to the public and is a
13 practical necessity for anyone desiring to become a commercial pilot; (3)
14 Moody holds itself out as willing to perform this service for a large
15 segment of the public with the sole requirement that the applicant has
16 been a practicing Protestant Christian for at least a year prior to enrolling;
17 (4) Moody possessed a decisive advantage of bargaining strength against
18 Joochan; (5) in exercising its bargaining advantage, Moody required
19 Joochan to sign an adhesion contract of exculpation. It had no provision
20 whereby Joochan could pay more fees for protection against Moody's
21 negligence; and, (6) Joochan was under the control of the furnisher of the
22 services, subject to risk of carelessness on the part of Moody.

23 7.4 Last, Yuki was unaware that Moody had required Joochan to sign
24 an exculpatory waiver as of his attendance. She never consented to, nor
25 did she ever authorize Joochan to waive any of her rights. Joochan did
26 not have authority to waive any such rights on behalf of his wife nor their
27 unborn daughter A.L. This exculpatory waiver was ineffective against Yuki
28 and A.L.'s claims for wrongful death as hereinafter alleged.

1 9.7 RCWA 4.20.020 WRONGFUL DEATH—BENEFICIARIES OF ACTION provides
2 that Yuki, as the widow, is a beneficiaries of this wrongful death action.

3 9.8 Both Yuki and A.L. are entitled to recover damages for this wrongful
4 death cause of action as described below.

5 **C. Third Cause of Action**
6 ***General Survival Statute***

7 9.9 All above paragraphs are incorporated herein as fully set forth.

8 9.10 RCWA 4.20 046 SURVIVAL OF ACTIONS (commonly referred to as
9 "*general survival statute*") grants Plaintiff Yuki Lee, in her capacity as
10 Personal Representative of the Estate of Joochan Lee, for the benefit of
11 Joochan's estate in which Yuki and A.L. are the sole heirs, a cause of
12 action against this defendant whose wrongful acts were the proximate
13 cause of the death of her husband Joochan Lee.

14 9.11 The Estate of Joochan Lee is entitled to recover economic
15 damages for this wrongful death cause of action as described below.

16 **D. Fourth Cause of Action**
17 ***Special Survival Statute***

18 9.12 All above paragraphs are incorporated herein as fully set forth.

19 9.13 RCWA 4.20.060 ACTION FOR PERSONAL INJURY SURVIVES (commonly
20 referred to as "*special survival statute*") grants Plaintiff Yuki Lee, in her
21 capacity as Personal Representative of the Estate, for the benefit of Yuki
22 and A.L., a cause of action against defendant whose wrongful acts were
23 the proximate cause of Joochan's pre-death fright and terror, anxiety, and
24 emotional distress, which culminated in Joochan's death.

25 9.14 Both A.L. and Yuki are entitled to recover damages for this cause
26 of action as described below.

27 **X. DAMAGES**

28 **A. Damages for First Cause of Action**

1 10.1 As a direct and proximate result of Moody's wrongful acts alleged
2 in the first cause of action, A.L. suffered damages as follows.

3 10.2 A.L. suffered and will continue to suffer loss of love,
4 companionship, and guidance.

5 10.3 A.L. has also suffered past economic damages in loss of any
6 benefit of value, including money, goods, and services she would have
7 received from Joochan up to time of trial.

8 10.4 A.L. will continue to suffer future economic damages in loss of any
9 benefit of value, including money, goods, and services she would have
10 received from Joochan after trial during their lives had Joochan lived to a
11 normal life expectancy.

12 **B. Damages for Second Cause of Action**

13 10.5 As a direct and proximate result of Moody's wrongful acts as
14 alleged in the first cause of action, Yuki suffered damages as follows.

15 10.6 Yuki has suffered and will continue to suffer noneconomic loss of
16 marital consortium, which includes fellowship, company, cooperation, aid,
17 emotional support, love, affection, care, services, companionship
18 including sexual companionship and assistance from husband to wife.

19 10.7 Yuki has suffered past economic damages in loss of benefits of
20 value, money, goods, and services she would have received from Joochan
21 up to time of trial. Last, Yuki will suffer future economic damages.

22 10.8 Yuki will to suffer future economic damages in the loss of any
23 benefit of value, including money, goods, and services she would have
24 received from Joochan after trial during their lives had Joochan lived to a
25 normal life expectancy.

26 **C. Damages for Third Cause of Action**
27
28

1 10.9 As a direct and proximate result of Moody's wrongful acts as
2 alleged in the third cause of action, the Estate of Joochan Lee suffered
3 damages as follows.

4 10.10 The Estate of Joochan Lee suffered past, and will suffer, loss of
5 net accumulations during his life had he lived to a normal life expectancy.
6 His estate also incurred funeral expenses.

7 **D. Damages for Fourth Cause of Action**

8 10.11 As a direct and proximate result of Moody's wrongful acts as
9 alleged in the fourth cause of action as alleged above, the Decedent
10 Joochan Lee suffered pre-death noneconomic damages as follows.

11 10.12 Between the moment of the birdstrike and the instant of impact
12 with the terrain below, Joochan experienced fright and terror, anxiety,
13 and emotional distress.

14 10.13 Yuki and A.L. are the sole beneficiaries of an award for these
15 damages.

16 **XI. PRAYER FOR RELIEF**

17 11.1 Plaintiff Lee prays for judgment against defendant as follows.

18 11.2 Economic and noneconomic damages sustained by plaintiffs in
19 amounts to be proven at trial.

20 11.3 All other damages, which Plaintiffs may be entitled under law;

21 11.4 Prejudgment and post judgment interest.

22 11.5 Attorney fees and costs in prosecuting this action.

23 11.6 Such relief as the Court deems just and equitable in the premises.

24 **WHEREFORE** Plaintiff Yuki Lee prays for judgment against defendant.

25 Dated this 31st day of August 2022.

26 **HERRMANN LAW GROUP**

27 /s/ Charles Herrmann

28 Charles Herrmann (WSBA #6173)

Anthony Marsh (WSBA #45194)
Attorneys for Plaintiff